

FILED

June 14, 2010

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

EFFECTIVE

MARCH 10, 2010

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

In the Matter of the Suspension : Administrative Action
or Revocation of the License of: :
: :
SWAPNADIP LAHIRI, M.D. : FINAL DECISION AND ORDER
LICENSE NO. 25MA06313700 :
: :
To Practice Medicine and Surgery :
In The State of New Jersey :
:

This matter was returned to the New Jersey State Board of Medical Examiners (the "Board") following a ten day hearing at the Office of Administrative Law and the entry of an Initial Decision by A.L.J. Moscovitz on December 24, 2009. This matter was initiated via an Administrative Complaint which alleged in Count I that Dr. Lahiri performed negligent and inadequate examinations of six patients and then inflated the coding and billing of the examinations. Count Two alleged that Lahiri performed, directed, ratified, or condoned inadequate or incomplete electrodiagnostic testing; fabricated the tests results and then unbundled the services to inflate the billing. Count Three included allegations that Lahiri misrepresented or omitted professional information including his professional address on his reports, bills, and forms. In Count Four, the

State alleged that New Jersey had grounds for discipline following disciplinary action by a sister state agency as Lahiri had surrendered his license to practice medicine in the State of New York in an application in which he agreed that he was unable to defend against a "third specification" which alleged "unwarranted tests/ treatments," that his conduct constituted "gross and repeated negligence" and "incompetence" and "professional misconduct" and also alleged that as his name was stricken from the roster of physicians in New York, his authority to engage in practice in New York had been suspended or revoked. Finally, Count Five of the Complaint alleged that Lahiri failed to notify the Board of Medical Examiners of his license surrender in New York in violation of New Jersey statute and Board regulations. Within his decision, A.L.J. Moscovitz found that all counts of the administrative complaint had been proven, and thus as to Count I determined that as to six patients respondent violated all of the specified statutory and regulatory provisions for documenting, coding and billing for the initial consultations and follow-up visits. The A.L.J. concluded that respondent engaged in misrepresentation, gross negligence or incompetence, repeated negligence or incompetence, professional misconduct, and failure to comply with regulations administered by the Board in violation of N.J.S.A. 45:1-21(b), (c), (d), (e) and (h).

Similarly, the A.L.J. concluded that all of the allegations of Count II of the Complaint had been proven, and thus concluded that respondent violated all of the specified regulatory provisions for ordering electrodiagnostic testing, performing NCV's (nerve conduction studies) and EMG's (needle electromyography) and coding and billing for both NCV's and EMG's of the six patients and found respondent engaged in misrepresentation, gross and repeated negligence and incompetence, professional misconduct and failure to comply with the regulations administered by the Board in violation of N.J.S.A. 45:1-21(b), (c), (d), (e) and (h).

As to Count III, the ALJ found that Lahiri failed to list physician licensee employees of a professional corporation (Jersey City Back and Neck Center) on professional stationery from 2001 until 2004 in violation of N.J.A.C. 13:35-6.10(h); failed to list the address where professional services were rendered to patient W.C. on November 1, 2004 on a claim for professional services in violation of N.J.A.C. 13:35-6.1(f); and failed to notify the Board of changes to his practice locations and changes to his biennial license in 2003 and 2005 in violation of N.J.S.A. 45:9-22.23 and N.J.A.C. 13:35-6.19(b)(1) respectively. Likewise, the ALJ concluded as to Count IV that Lahiri's surrender of his medical license in New York is consistent with suspension or revocation of license as it

included a ban on practice and thus warrants the surrender of his license in New Jersey, pursuant to N.J.S.A. 45:1-21(g). Finally as to Count V, the ALJ found, as stipulated by respondent, that he failed to notify the Board of charges filed against him by the New York licensing authorities that this failure was in violation of N.J.A.C. 13:35-6.19(c)(3). The ALJ concluded that disciplinary action could be taken pursuant to N.J.S.A. 45:1-21(h).

Based on said findings, the A.L.J. recommended that the Board enter an Order suspending respondent's license for a period of three years, the first year active and the remainder to be a probationary period. Prior to resuming practice, the A.L.J. recommended that respondent take remedial courses in electrodiagnostic procedures, recordkeeping, billing and coding. The A.L.J. also recommended that the Board impose a civil penalty in the amount of \$85,000 and assess costs against Dr. Lahiri.

Following the entry of the Initial Decision on December 24, 2009, written exceptions of the parties to the Initial Decision were to be filed and served not later than January 8, 2010. The Attorney General submitted written exceptions on January 4, 2010 urging that the Board adopt all findings of fact and conclusions of law within the Initial Decision, but reject the A.L.J.'s penalty recommendation and instead order the revocation of

respondent's license. Respondent did not timely file any exceptions to the Initial Decision, despite seeking and receiving additional time until February 10, 2010 to do so. Respondent did submit a letter dated February 15, 2010, addressed solely to the sanctions to be imposed. Therein, respondent's counsel, Joseph Gorrell, Esq., suggested that respondent does not accept the findings of the A.L.J., but rather than submitting exceptions (as required by N.J.A.C. 1:1-18.4) specifying the precise findings of fact and conclusions of law to which exception was taken; those proposed in lieu of or in addition to those reached by the ALJ; and setting forth supporting reasons including reference to testimony or other evidence relied upon, instead, respondent relied upon his post-hearing brief, to "refute the allegations against Dr. Lahiri." Respondent's counsel, Mr. Gorrell, requested the Board to consider his post-hearing brief and responded to the State's exceptions by urging that the A.L.J.'s finding there was no willful conduct be accepted and his recommendation that respondent be allowed to take remedial education and the other sanctions recommended, be affirmed.

The matter was scheduled for consideration by the Board on March 10, 2010.¹ Respondent then appeared before the Board

¹Although respondent's submission of "exceptions" to the A.L.J.'s Initial Decision was not timely filed, we have nonetheless considered his arguments. We note that counsel's submission of his post-hearing brief as "exceptions" is

represented by Joseph Gorrell, Esq., and Senior Deputy Attorney General Joan Gelber appeared on behalf of Attorney General Dow. Respondent orally argued that the ALJ never made specific findings as to the six particular patients at issue, but rather made summary findings as to the care rendered by respondent. He then argued that the care provided to one patient, L.M., demonstrated that respondent did not engage in knowing, deliberate conduct, as Lahiri did not perform any electrodiagnostic testing after his own examination in 2004, rather when the patient was subsequently referred by an orthopedist in November 2007 for testing (who reported numbness, tingling and radiation down the leg), then respondent performed the testing. Finally, he urged that the Board should accept the finding of the ALJ that whatever problems there were, were not willful, but rather based on inadequate training and supervision.

The State responded by indicating that respondent should not have performed testing on patient L.M. The patient cited was referred with findings by the referring physician which failed to justify electrodiagnostic testing, (including no

inapposite, and fails to follow the OAL rules on exceptions or to point out the particular findings of the ALJ to which exception is taken in accord with those rules. We do not find it appropriate or necessary to discuss respondent's post-hearing brief in detail. It was already considered and the arguments therein rejected, in the well-reasoned and exhaustive decision of the ALJ.

weakness or sensory deficit, straight leg raising negative, good range of motion without pain, good strength in extremities, intact sensation and intact deep tendon reflexes). The State asked the Board to consider that the job of Dr. Lahiri, an independent specialist, was to conduct his own examination and evaluation and not to perform electrodiagnostic testing when there was no support for it based on the findings of the referring physician.

The State cited various factors supporting a finding that Dr. Lahiri's conduct was willful, not a result of ignorance, including respondent's decades of practice holding himself out as a specialist, as to all patients the completely inappropriate data given to him by the technician which didn't match what was seen in the patient, numerous major deficiencies found in eletrodiagnostic testing such as wrong muscles tested, no paraspinals, wrong window, excessive sensitivity, and signal cutoffs right off the grid. The State urged there was no way respondent could have failed to see this and understand it. Additionally, the State pointed to findings of duplicated and fabricated wave forms, and demonstrations on the record of how much time a practitioner could save by not running a complete test and instead creating fabricated data.

Having reviewed the entire record including the multifaceted, far reaching, and numerous deficiencies found by

the ALJ as to every aspect of respondent's practice, (including for example inadequate examination, inadequate records, every aspect of testing - ranging from the evaluation prior to testing, the choice of which muscles to test [which were always the identical muscles, never tailored to the patient], insufficient muscle screens, the same nerve conduction studies done on all patients, failing to follow up possible abnormalities, use of fabricated testing data, [including identical wave forms for more than one patient or two tests for one patient], issuance of unsupported diagnoses, inflated billing including unbundling billing for the electrodiagnostic testing, inflating of coding for the exams claimed, and double billing for needle EMG's), we have reached the conclusion that this multiplicity of violations could not be the result of ignorance or lack of training alone. We reach a different conclusion than the ALJ based on the facts he found - that is respondent had to have known he was violating the standard of care and engaged in willful violations. Based in part upon our expertise as physicians, we find the multitude of poor practices, misrepresentations and commission of virtually every offense a physician could commit in this type of medical practice, could not be the result simply of poor training or incompetence after respondent's many years of practice holding himself out as a specialist in the field.

We therefore adopt and incorporate as if fully set forth herein, the factual findings of the ALJ, with the exception that we modify the conclusions of the ALJ, based on those factual findings, to conclude that respondent's conduct was a result not only of incompetence, but of intentional or willful conduct on his part as well. We also adopt the proposed conclusions of law of the ALJ. Following the Board's vote to adopt the ALJ's proposed findings as modified, we proceeded to conduct a hearing on the issue of penalty to be assessed, at which hearing respondent was afforded an opportunity to present evidence in mitigation of penalty.

Upon consideration of the arguments of the parties, the mitigation evidence presented, and upon our own independent review of the record, we also concluded that cause exists to modify the recommendation made by the A.L.J. as to penalty. Specifically, we concluded that respondent's conduct - particularly, his having engaged in a variety of egregious acts of gross or repeated incompetence, misrepresentation and professional misconduct, which permeate every aspect of his practice, as well his as prior discipline in this State and the State of New York, warrant the revocation of his license. We adopted the A.L.J.'s recommendation that respondent be assessed an \$85,000 civil penalty and costs of the investigation and proceeding, as well as restitution to third party payers. We

set forth in detail below the basis for our conclusions and actions.

DISCUSSION ON PENALTIES

Respondent began his presentation in mitigation of penalty by detailing all of the medical training he had since beginning his residency in New York in 1975, including an Internal Medicine Internship, several years in Physical Medicine at New York Medical College, and a clinical fellowship in Physical Medicine at Harlem Hospital. After beginning private practice in 1993, his more recent training included continuing medical education through an annual EMG & NCV course at Columbia University from 2004 through 2009, which he described as basic and advanced courses consisting of lectures and practical hands-on EMG & NCV experience with live patients. Respondent testified this training improved his practice, he learned of many new advances, received several large books, and tried to follow the guidelines from what he learned.

Respondent also informed the Board that he is unable to practice medicine since September 2009 and is on disability, as he has several medical conditions including a Jones fracture which is not healing, and for which surgery has not been recommended. The Board was informed his condition may not improve, and as he is not able to practice. His counsel suggested there is therefore no need to suspend respondent's

license.

In response to questioning by his attorney, respondent claimed he never did a test that he knew was inappropriate. He also testified that his "main mistake" was that he "should have supervised my 'tech' more carefully, which I did not... ." He agreed on cross-examination that he saw the work product - the test data - of his technician before respondent did his interpretation. Respondent acknowledged he had the opportunity to see all of the errors and improper wave forms and other issues identified at the hearing, stating "out of so many EMGs I have done my whole life, I might have missed some of them."

In closing, respondent's counsel urged that only six cases had formed the basis of the State's case and asserted there was no evidence to support that these cases were representative of respondent's practice.

The State responded that the six cases were presented as showing a pattern of practice over an extended period of time from 2001 through 2006 including at least one case which occurred after respondent took the "advanced" courses he described in his testimony, yet for which the same deficiencies were found. That these cases represented respondent's standard pattern of practice, was demonstrated by Dr. Lahiri's testimony at an investigative inquiry before a Committee of the Board in

September of 2006 (P-21 in evidence), at which time he made clear that the manner in which these cases and testing were handled were standard in his office. Thus for example, he tests the same four muscles in patients and does not do paraspinal muscle testing in his office (P-21 at p.59 to 60); a standard protocol is used for NCV testing - that is the same nerves are done on the upper extremity (P-21 at p.49 to 50). Likewise when the lower extremity is tested, the same nerves are tested on each patient (P-21 at p.51). Respondent did not suggest there was anything unusual about the six cases presented, to the contrary, this was his pattern and manner of practice.

The State also urged that the sanction recommended by the ALJ was far too lenient, and that for the extensive findings made of a profound lack of competency and integrity, coupled with his status of multiple prior offenses, revocation of license and far higher monetary penalties were appropriate.

We agree with the State that given the pervasive and extensive findings of wrongdoing in this matter, coupled with prior disciplinary sanctions and suspensions of respondent in New Jersey and New York, (the first involving harassment of a patient and other allegations of moral unfitness and fraudulent practice leading to suspension of his license; the latest involving allegations of unnecessary testing, similar to this

matter, resolved by a plea in New York which indicated respondent could not defend the third specification, and his agreement to a surrender of license and to be stricken from the rolls of New York Physicians), that the appropriate sanction in this matter is a revocation of license. Whether a result of willful misconduct, incompetence of monumental proportions or both, this matter involves deficiencies in every aspect of respondent's patient interactions and practice such that patients are subject to the same risks of harm from his care whether his conduct was willful or grossly incompetent. Additionally, as demonstrated by his testimony during investigative inquiry, respondent's practice with all his patients was consistent with the treatment of the six cases presented. Finally, even after receiving repeated advanced training, respondent's care of a patient in 2006 was the same as his earlier treatment.

Most disturbing, even at this stage of the proceeding, Respondent views the major problem in this matter to be his failure to supervise his "tech" properly, never acknowledging his own deficiencies, insisting his examinations and tests had been performed and interpreted properly. Faced with findings by the ALJ (relying on the State's expert witness Dr. Mulford) that respondent overused electrodiagnostic testing, demonstrated poor technique in performance of testing, interpreted test results

inaccurately, countenanced duplicate waveforms and fabricated data (Initial Decision at p.155), respondent nonetheless asserted to the Board that the major problem in this case was his reliance upon his "tech." We are struck by this physician's total lack of insight regarding his own deficiencies. Respondent is a poor candidate for rehabilitation given the absence of recognition even at this stage of the proceedings. Despite long years of practice and having been through prior discipline, respondent was unable to recognize that in a variety of significant ways, his practice was significantly below acceptable standards of practice.

In addition to the revocation of license we find the remainder of penalty recommendations made by the A.L.J. to be appropriate and balanced. Although the Attorney General requested a significant increase in the A.L.J.'s penalty recommendation, and respondent argued that imposition of penalties and costs in an amount exceeding \$100,000 would be harsh and exacerbate the financial consequences of time out of practice, we expressly adopt the recommendation of the A.L.J. to assess \$85,000 in penalties (apportioned as indicated below) for the numerous violations found by the A.L.J. and herein, together with costs and restitution.

On the issue of costs, we adopt the A.L.J.'s recommendation that respondent be assessed the costs of the investigation and

prosecution of this matter. In doing so, we reject respondent's claim that costs and penalties should not be imposed because of the financial impact this would have on respondent as he will be out of practice. That is the result in every case in which a license is suspended or revoked and monetary assessments are imposed. We point out that, were we not to assess costs against respondent, those costs would instead be borne by the entire licensee population (as it is the licensee population which ultimately pays all Board expenses via licensure fees), and we do not perceive that to be an equitable result in this case.²

THEREFORE, IT IS ON THIS 8th DAY OF JUNE 2010³

ORDERED:

1. The license of respondent to practice medicine and surgery in the State of New Jersey was revoked effective immediately upon oral announcement on the record on March 10, 2010.

2. Prior to any application for reinstatement of license being considered by the Board, respondent shall at his own expense, undergo a focused evaluation with an entity pre-

²Additionally, respondent was notified that if he wished the Board to consider financial hardship in determining this matter, financial documentation including a certified statement of assets and tax returns would have to be submitted. He failed to make any such submission.

³The record was held open to receive documents regarding restitution, which were considered by the Board at its meeting of April 14, 2010. Time for filing of this Order was extended until late June 2010.

approved by the Board and comply with the recommendations of the evaluation; shall fully attend and successfully complete courses in ethics, recordkeeping, coding and billing, all pre-approved by the Board; shall appear before the Board or a Committee if requested, and shall successfully demonstrate his fitness and competency to the Board's satisfaction.

3. Respondent is hereby assessed a civil penalty in the amount of \$85,000 representing \$10,000 for the violations found as to patient W.C., and \$15,000 each for the other patients regarding whom violations were found-that is F.M., L.M., A.A., E.C., and R.L.

4. Respondent is assessed costs of this action, in an aggregate amount of \$140,304.60 representing attorney's fees of \$114,284, expert witness fees of \$21,382, and transcript costs of \$4,638.60.⁴

⁴We have reviewed the extensive certifications submitted in support of cost assessments and find the amounts sought to be reasonable in the context of this long, complex and important matter, with regard to the detail submitted, the number of hours of attorney time and the rates of compensation for that time. Attorney's fees are the subject of a memo detailing the rates charged by the Division of Law for a DAG with 10 or more years of experience - \$175 per hour, which we have considered and approved many times in the past, and note is well below the community standard. The application is sufficiently detailed to permit our conclusion that the amount of time spent, and the overall fees sought, are objectively reasonable. (See Poritz v. Stang, 288 N.J. Super 217 (App. Div. 1996). Similarly, sufficient documentation of expert witness and transcript fees has been submitted to support our conclusion that the imposition of these costs is reasonable viewed in the context of the seriousness and scope of the action maintained against respondent.

5. Respondent shall pay the aggregate penalties and costs herein in full within 30 days of the entry of this Order or in such installments as are approved by the Board upon respondent's application within 30 days of entry of this Order. The first payment shall be due on or before July 15, 2010, and the remaining payments shall thereafter be due on or before the fifteenth day of each ensuing month until fully paid including interest as provided by the rules of court. All payments shall be made by certified check, attorney's trust account check or money order made payable to the Treasurer of the State of New Jersey and submitted to the Board office.

6. Respondent shall pay the aggregate amount of \$5,032.52 in restitution⁵ ordered herein by certified checks, attorney's trust account checks or money orders made payable to each of the third party payors in the amounts indicated below and by the Attorney General in her submission of March 15, 2010, without objection by respondent. Proof of such payments shall be forwarded to SDAG Gelber and the Board within 30 days of entry of this order:

a) \$1,139.89 as to patient F.M. payable to AAA Mid-Atlantic Insurance Group, 2040 Market Street, Philadelphia, PA 19103.

b) \$67.37 as to patient L.M. payable to AAA Mid-Atlantic

⁵The State was directed to and did submit documentation of restitution owed to third party payers within 15 days after the hearing before the Board. Respondent submitted a response in which he did not object to the amounts sought by the State.

Insurance Group, 2040 Market St., Philadelphia, PA 19103.

c) \$189.83 as to patient A.A. payable to Allstate New Jersey Insurance Company, P.O. Box 250, Pluckemin, New Jersey 07978.

d) \$1,764.79 as to patient E.C. payable to Allstate New Jersey Insurance Company, P.O. Box 250, Pluckemin, New Jersey 07978.

e) \$1,870.64 as to patient R.L. payable to New Jersey CURE Insurance, 214 Carnegie Center, Suite 101, Princeton, New Jersey, 08540.

7. Failure to timely make any payments due under this Order shall result in the filing of a certificate of debt as well as any other proceedings as permitted by law.

8. Respondent shall comply with the Directives regarding Disciplined Licensees which are incorporated herein whether or not attached to this Order.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: 

Paul C. Mendelowitz, M.D.
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.